Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Policy and Rules Concerning the Interstate, Interexchange Marketplace	)	CC Docket No. 96-61
	)	
	)	
Implementation of Section 254(g) of the Communications Act of 1934, as amended	)	

To: The Commission

COMMENTS AND
PETITION FOR FORBEARANCE

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SUMMARY

BellSouth Corporation ("BellSouth") urges the Commission to forbear from applying Section 254(g) to the CMRS industry. This is an extremely competitive industry, with five to nine competitors authorized in *every* market. Prices have fallen continuously for years, a trend that continues today. Every day, customers willingly switch carriers to get a better deal, a better package, or better coverage. As a result, service providers are highly responsive to consumer demands on a local and regional basis. Applying heavy-handed national rate integration to this vibrantly competitive industry can only hurt consumers and stifle competition. In this competitive, market-driven environment, rate integration simply is not "necessary" to protect consumers or to ensure that interstate, interexchange CMRS rates are just and reasonable and are not unjustly or unreasonably discriminatory. Carriers are not able to charge rates that are unjust, unreasonable, or discriminatory because a competitor will rapidly take business away. Market forces can and do ensure just and nondiscriminatory rates.

Even though the CMRS industry was never subject to rate integration, there is no evidence that CMRS providers have charged unreasonable or discriminatory rates for interstate, interexchange calls. Instead, many CMRS providers are offering plans that provide free long distance. In the absence of evidence that the CMRS industry's current and past interexchange plans are unjust, unreasonable, or discriminatory, the Commission should not interfere with the marketplace. It cannot find that applying rate integration to CMRS is necessary for the protection of consumers or to ensure that rates are just and reasonable.

Forbearance is warranted because it will serve the public interest. The Communications Act makes clear that promotion of competition is the key to the public interest finding. There can be no doubt that forbearance will further competition, while applying rate integration will stifle it. Rate integration is a blunt instrument that will deprive consumers of the benefits of carrier responsiveness to their needs. A determination that forbearance will promote competitive market conditions can be the sole basis for finding that forbearance serves the public interest. That is the case here.

The cost of CMRS can vary significantly by locale. Competitive conditions in each local market vary greatly and wireless carriers traditionally have developed innovative marketing strategies to distinguish themselves from competitors. Rate integration would undermine the ability of CMRS carriers to distinguish themselves based on interstate, interexchange CMRS rates at the local level. Although some CMRS providers have aggregated markets together to form new nationwide networks, the majority of the industry operates regional systems clustered around communities of interest. Rate plans are tailored specifically to these communities of interest. Rate integration would cause carriers to eliminate a large number of these rate plans and would inhibit the ability of CMRS carriers to distinguish themselves from one another and deny consumers the benefit of rate plans catering to local or regional needs.

Departure from the market-based pricing arrangements that have governed CMRS in the past will result in diminished consumer choice, lessened competition, and increased prices. Extension of rate integration to CMRS would inhibit CMRS providers from competing based on "service packages" that involve interexchange services. Accordingly, the Commission should forbear from applying rate integration to interstate, interexchange CMRS, particularly CMRS wide-area calling

plans. Such forbearance would permit rates to differ based on local market conditions, which are largely irrelevant for traditional wireline interstate, interexchange carriers.

The blunt instrument of rate integration will ring the death knell for hundreds of market-specific pricing plans for integrated service packages. If wide-area calling plans are subjected to rate integration, BellSouth will likely discontinue half of its existing plans. A one-size-fits-all policy means that *all* consumers will be disadvantaged.

The Commission also should forbear from applying rate integration to airtime and roaming charges associated with interstate, interexchange calls. In its various roaming decisions, the Commission has steadfastly refused to require that a CMRS carrier charge the same rates for roaming in every market. Cellular carriers compete vigorously in their marketing efforts on the basis of their roaming footprint and roaming rates. If CMRS carriers were required to integrate their roaming rates in all markets, their ability to differentiate themselves from their competition would be severely limited. As a result, rate integration would unquestionably lessen overall competition in the CMRS market.

The Commission should only require a company to rate integrate with the company that controls it. For rate integration purposes, BellSouth proposes that control be defined as residing in the single stakeholder exercising day-to-day management control even if it holds less than 50 percent of a company's equity. Absent a definitional change, cross-affiliate rate integration will, through a daisy-chain effect, require virtually the entire CMRS industry to stop competing with respect to interexchange service pricing and charge the same rates.

BellSouth also urges the Commission to refrain from requiring integration between different forms of CMRS, such as cellular and PCS. A PCS licensee with a cellular affiliate will be dissuaded from offering the creative rate plans necessary to increase market share if the same package must be offered in markets where it is a cellular licensee with a substantial market share. Moreover, such a requirement will create considerable confusion because of the different license areas associated with cellular and PCS.

Finally, should the FCC refrain from full forbearance of rate integration in CMRS, existing plans must be grandfathered, in order to eliminate consumer disfavor and confusion.

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COMMENTS AND PETITION FOR FORBEARANCE

BellSouth Corporation ("BellSouth"), on behalf of its affiliates and subsidiaries, hereby submits these comments and formal request for forbearance in response to the Commission's *Further Notice of Proposed Rulemaking* in the captioned proceeding.[1] BellSouth generally opposes extension of rate integration principles to the CMRS industry. To the extent the Commission extends such principles to CMRS, however, it should exempt wide-area calling plans. Otherwise these plans will be jeopardized. Moreover, the Commission should not include local usage and roaming charges associated with interstate, interexchange CMRS calls in any rate integration requirement, and it should exclude existing rate plans from any such requirements.

Additionally, the Commission should modify its definition of affiliate for rate integration purposes. The Commission should only require a company to rate integrate with the company that controls it. For rate integration purposes, control should be defined as the stakeholder exercising day-to-day management control even if it holds less than 50 percent of a company's equity. Absent

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[1] *Policy and Rules Concerning the Interstate Interexchange Marketplace*, CC Docket No. 96-61, *Further Notice of Proposed Rulemaking*, FCC 99-43 (April 21, 1999) ("*FNPRM*"). Pursuant to Section 10 of the Communications Act, 47 U.S.C. § 160(c), this Petition for Forbearance "shall be deemed granted" if the Commission does not deny it within one year. The Commission may extend this deadline by 90 days if additional time is necessary to act on the Petition.

a definitional change, cross-affiliate rate integration will, through a daisy-chain effect, require virtually the entire CMRS industry to stop competing with respect to interexchange service pricing and charge the same rates.

As discussed below, BellSouth also urges the Commission to refrain from requiring integration between different forms of CMRS, such as cellular and PCS. A PCS licensee with a cellular affiliate will be dissuaded from offering creative rate plans in an effort to increase market share if the same package must be offered by its cellular affiliate in markets where the affiliate already has substantial market share. Moreover, such a requirement will create considerable confusion because of the different license areas associated with cellular and PCS.

BACKGROUND

The Commission adopted its rate integration policy to eliminate the practice of providing long distance service between the contiguous forty-eight states and various offshore domestic points at international rates. As a result, carriers offering interstate, interexchange service to or from Alaska, Hawaii, Puerto Rico, and the Virgin Islands were required to do so pursuant to the rate structures and uniform mileage rate patterns applicable to the mainland.[2] This policy was spurred by the development of satellite communications, which permitted the provision of interstate,

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[2] *See Integration of Rates and Services,* 61 FCC 2d 380, 383-84 (1976) ("*1976 Integration of Rates and Services Order*").

interexchange service between the contiguous and non-contiguous states at comparable costs.[3] This FCC rate integration policy had never been applicable to CMRS carriers.[4]

As part of the Telecommunications Act of 1996, Congress created new Section 254(g) of the Communications Act, 47 U.S.C. § 254(g), to codify the Commission's existing rate integration policy.[5] Section 254(g) requires "providers of interstate interexchange telecommunications services" to integrate their rates.[6] The Commission subsequently found that "the phrase 'a provider of interstate interexchange telecommunications services' in Section 254(g) is . . . ambiguous."[7]

Given this ambiguity, the FCC stated that it would interpret the phrase consistent with the preexisting FCC rate integration policy. Nevertheless, the Commission concluded that Section 254(g) required that CMRS providers be subject to rate integration for the first time, even though it found that "interstate, interexchange CMRS offerings are not the same service as other interstate interexchange service."[8] Subsequently, the Commission claimed that the phrase, "a provider of

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[3] *Domestic Communications Satellite Facilities,* Docket 16495, *Second Report and Order,* 35 FCC 2d 844, 856-57 (1972) ("*Domsat II*"), *aff'd on recon.,* 38 FCC 2d 665 (1972) ("*Domsat II Recon.*"), *aff'd sub nom. Network Project v. FCC,* 511 F.2d 786 (D.C. Cir. 1975); *Interstate, Interexchange Marketplace,* CC Docket 96-61, *Notice of Proposed Rulemaking,* 11 F.C.C.R. 7141, 7180-81 (1996) ("*NPRM*").

[4] *Policy and Rules Concerning the Interstate Interexchange Marketplace,* CC Docket No. 96-61, *Memorandum Opinion and Order,* Dissenting Statement of Commissioner Powell, 1999 FCC LEXIS 400, *4 (Jan. 29, 1999) ("Powell Dissent").

[5] H.R. Conf. Rep. No. 104-458, at 132 (1996) *reprinted in* 1996 U.S.C.C.A.N. 124, 143-44 (emphasis added) ("Joint Explanatory Statement").

[6] 47 U.S.C. § 254(g).

[7] *Policy and Rules Concerning the Interstate Interexchange Marketplace,* CC Docket No. 96-61, *First Memorandum Opinion and Order on Reconsideration,* 12 F.C.C.R. 11812, 11819 (1997) ("*Reconsideration Order*").

[8] *Id.* at 11821. GTE sought review of this decision with the United States Court of Appeals for the D.C. Circuit. *GTE Service Corporation v. FCC,* No. 97-1538 (Sept. 4, 1997). BellSouth has intervened in this appeal.

interstate interexchange telecommunications services" in Section 254(g), which it previously described as "ambiguous," was in fact "unambiguous and plainly applies to CMRS providers."[9]

The Commission did not require rate integration across wireline-wireless service lines, however, and companies thus were permitted to integrate their CMRS and wireline interexchange services separately.[10] It did, however, hold that "section 254(g) requires the implementation of rate integration across affiliates."[11] Moreover, it used the definition of "control" in Section 32.9000 of its rules to determine whether two carriers would be deemed affiliates.[12] Because this rule sets a very low threshold for control, many competing CMRS carriers would be deemed affiliates, given the complex structure of this industry.

One party sought a stay of the CMRS rate integration requirement, citing the difficulties posed by the affiliation rule and the complex questions concerning how rate integration would affect the wide-area calling plans common in the CMRS industry. In response, the Commission stayed the rate integration requirement for CMRS to the extent it required the integration of wide-area plans and integration among affiliates.[13]

On October 3, 1997, BellSouth and others sought reconsideration of the Commission's determination that Section 254(g) was intended to apply to CMRS. Alternatively, the Commission was urged to forbear from applying Section 254(g) to the CMRS industry.[14] At the end of 1998, the

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9 *Policy and Rules Concerning the Interstate Interexchange Marketplace*, CC Docket No. 96-61, *Memorandum Opinion and Order*, FCC 98-347, _ F.C.C.R. _____, ¶11, 14 Comm. Rep. 1090 (1998) ("*MO&O*").

10 *Reconsideration Order* at 11821.

11 *Reconsideration Order* at 11820.

12 *Reconsideration Order* at 11821.

13 *Policy and Rules Concerning the Interstate Interexchange Marketplace*, CC Docket No. 96-61, *Order*, 12 F.C.C.R. 15739 (1997) ("*Stay Order*").

14 BellSouth Petition for Reconsideration and Forbearance, CC Docket No. 96-61, at 5-6 (Oct. 3, 1997); Bell Atlantic Mobile Inc. Petition for Reconsideration and Petition for Forbearance, CC

Commission denied the petitions for reconsideration and requests for forbearance, but allowed the stay to remain in effect with respect to wide-area plans and affiliation, pending further proceedings.[15]

The Commission determined that the record at that time did not support complete forbearance with respect to the CMRS industry generally and that it had insufficient information to make a more limited forbearance determination with respect to CMRS wide-area calling plans or affiliation issues. A number of parties sought appellate review of the Commission's denial of the reconsideration requests, as well as its determination that forbearance was not warranted.[16] These appeals remain pending.

On April 21, 1999, the Commission released the subject notice requesting comment on the applicability of rate integration to the CMRS industry. Specifically, the Commission sought comment on the applicability of Section 254(g) to wide-area calling plans, services offered by affiliates, plans that assess local airtime or roaming charges in addition to separate long distance charges, and whether cellular and PCS service rates should be integrated jointly.[17]

Docket No. 96-61, at 7 (Oct. 3, 1997); CTIA Petition for Clarification, Further Reconsideration, and Forbearance, CC Docket No. 96-61, at 2-3 (Oct. 3, 1997); PCIA Petition for Reconsideration or Forbearance, CC Docket No. 96-61, at 8-9 (Oct. 3, 1997); PrimeCo Personal Communications, L.P. Petition for Reconsideration, or in the Alternative for Forbearance, CC Docket No. 96-61, at 2-3, 17-21 (Oct. 3, 1997); Telephone and Data Systems, Inc. Petition for Partial Reconsideration, CC Docket No. 96-61, at 3-4 (Oct. 3, 1997).

15 *See MO&O.*

16 *See GTE Service Corporation v. FCC*, No. 99-1046 (Feb. 11, 1999); *CTIA v. FCC*, No. 99-1045 (Feb. 9, 1999).

17 *See FNPRM* at ¶8.

DISCUSSION

I. THE COMMISSION SHOULD FORBEAR FROM APPLYING RATE INTEGRATION TO THE CMRS INDUSTRY

Throughout this proceeding, BellSouth has maintained that CMRS providers should be exempt from any rate integration requirement. Extending rate integration to CMRS is not required by the Communications Act and, indeed, is inconsistent with the specific legislative intent underlying Section 254(g). According to the legislative history, Congress merely intended to codify the Commission's existing rate integration policy,[18] which was inapplicable to CMRS. Extending rate integration to CMRS also contravenes the basic objective underlying the 1996 Act itself: to create a "pro-competitive, de-regulatory" telecommunications environment. As Commissioner Powell has noted, "[h]istory and, more importantly, Congress have judged that competition is a superior device for maximizing consumer welfare."[19]

Section 254(g) was not intended to extend principles of rate integration to CMRS. Even if Commission's contrary interpretation of Section 254(g) were correct, however, the Commission must forbear from applying rate integration to the CMRS industry under the test set out in Section 10 of the Communications Act.[20] That section mandates the Commission to eliminate regulatory

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18 Joint Explanatory Statement at 132.

19 *See* Powell Dissent, 1999 FCC LEXIS 400, *8.

20 To the extent the Commission previously determined that the record at that time did not support *complete* forbearance for the CMRS industry, BellSouth submits that competitive conditions have changed since that earlier determination. Moreover, the record developed in response to the Commission's more limited forbearance inquiry in the proceeding applies with equal force to the CMRS industry in general. Thus, the record developed in this proceeding can be used to support complete forbearance. *See FNPRM* (separate statement of Commissioner Powell). Of course, should the Commission opt against complete forbearance, BellSouth the more limited forbearance suggested by the *Further Notice*.

requirements, including those contained in the statute, that are not affirmatively necessary to consumer welfare. It provides:

> [T]he Commission *shall* forbear from applying any regulation or any provision of this Chapter to a telecommunications carrier or telecommunications service, or class of telecommunications carriers or telecommunications services, in any or some of its or their geographic markets, if the Commission determines that —
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> (1) enforcement of such regulation or provision is not *necessary* to ensure that the charges, practices, classification or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable, and are not unjustly or unreasonably discriminatory;
>
> (2) enforcement of such regulation or provision is not *necessary* for the protection of consumers; and
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> (3) forbearance from applying such provision or regulation is consistent with the public interest.[21]

As discussed below, these criteria require forbearance from application of Section 254(g) to the CMRS industry. The Commission cannot discharge its Section 10 obligations merely by shifting to petitioners complete responsibility for demonstrating that forbearance is warranted. Instead, Section 10 creates a "presumption" in favor of deregulation and that "the proponents of continued regulation (including the Commission)" bear the burden in demonstrating that continued or (as in this case) expanded regulation is warranted.[22]

A. Enforcement of Section 254(g) is Not Necessary for Just, Reasonable, Nondiscriminatory Rates

Rate integration is not "necessary" to ensure that interstate, interexchange CMRS rates are just and reasonable and are not unjustly or unreasonably discriminatory. The Commission has never evaluated "whether competitive conditions could (or do presently) produce [the goals of rate

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21 Section 10(a) of the Communications Act, 47 U.S.C. § 160(a) (emphasis added).

22 *See* Powell Dissent, 1999 FCC LEXIS 400, *8.

integration], at least as well as regulation can."[23] CMRS has been described as "the most competitive and dynamic segment of the telecommunications industry" and "the exemplar of fierce competition."[24] In this competitive environment, carriers cannot expect to charge rates that are unjust, unreasonable, or discriminatory because a competitor will rapidly take its business away by responding to consumer demands. At least five, and as many as nine, different providers of CMRS are authorized to provide CMRS in any geographic area. In Hawaii, for example, there are at least five *operating* CMRS providers — two PCS providers, two cellular providers, and an enhanced SMR provider.[25] As a result of this competition, consumers can easily replace any CMRS provider that charges disproportionate rates for interstate, interexchange calls. The high churn rate in the CMRS industry indicates that consumers do in fact change CMRS carriers in order to obtain lower prices or more favorable terms.

Competition has driven cellular service prices down by nearly 60% since 1988.[26] In particular, the average monthly bill for wireless telephone service declined approximately 8% over

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[23] *Id.* at *13.

[24] *Id.* at *5; Press Statement of Chairman William E. Kennard, In The Matter of Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (March 24, 1998).

[25] *See Nextel Enhanced SMR Coverage Map for the Islands of Hawaii* (visited May 24, 1999) <http://www.nextel.com/cgi-bin/localMarket.cgi?market=mkt51>; Phillips Business Information, Inc., *PCS Source Book* at 49 (Fall 1998).

[26] Cellular Telecommunications Industry Association, *CTIA's Semi-Annual Wireless Survey* (visited May 24, 1999) <http://www.wow-com.com/index_statsurv.cfm>; *see Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, Second Annual Report*, 12 F.C.C.R. 11266, 11280 (1997).

the last year, from $42.78 in December 1997 to $39.43 in December 1998.[27] The Commission has noted:

> [O]ne study reported that between 1994 and early 1997 the average price in competitive markets had dropped by 25 percent. Several other studies have shown that this decline continued into 1997. One study compared mobile telephone prices in December 1996 and September 1997 and found a decline of approximately 6 percent with some decreasing as much as 30 to 40 percent. A series of quarterly surveys from 1997 found that prices have dropped between 15 percent and 34 percent, much of which was due to cellular operators lowering their prices in response to broadband PCS operators. Finally, a study comparing year-end prices for 1996 and 1997 found that the median price per minute had dropped between 30 percent and 40 percent for residential users and between 30 percent and 50 percent for business users.[28]

Similar price decreases have occurred with respect to interstate, interexchange CMRS. As Professor Jerry A. Hausman noted:

> With the passage of the Telecommunications Act of 1996, BOC cellular companies began to provide cellular long distance, since the prohibition of the MFJ no longer applied. While it is too early to determine the competitive outcome of this new competition, the *BOC cellular companies are charging long distance prices for cellular significantly below the price charged by the IXCs.*[29]

This competitive nature of CMRS is sufficient to protect consumers and prevent unreasonable discrimination. Any attempt by a CMRS provider to charge unjust or unreasonable rates for interstate, interexchange service merely will cause it to lose future customers and cause

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[27] Cellular Telecommunications Industry Association, *CTIA's Semi-Annual Wireless Survey* (visited May 24, 1999) <http://www.wow-com.com/index_statsurv.cfm>; *Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, Third Report*, 12 Comm. Rep. 623, 633 (1998) ("*Third Annual Report*").

[28] *Id.* at 637.

[29] *See* BellSouth Phase II Comments (Apr. 25, 1996), Hausman Declaration at 12. Professor Hausman is the MacDonald Professor of Economics at the Massachusetts Institute of Technology, Cambridge, Massachusetts.

existing customers to switch carriers. Thus, market forces should be sufficient to ensure just and reasonable rates that are not unjustly or unreasonably discriminatory.

There is no evidence suggesting that market forces have been insufficient. The Commission has not cited any outpouring of consumer complaints concerning discriminatory or unreasonable CMRS interexchange rates; in fact, it has not cited a single such complaint in this proceeding.[30] In particular, there is no evidence that CMRS providers currently charge or will charge unreasonable or discriminatory rates for interstate, interexchange calls originating or terminating in Alaska, Hawaii, Puerto Rico, or the Virgin Islands.[31] Instead, the Commission relies on "speculative pronouncement[s] about discriminatory rates without looking to see in any detail if rates have in fact been unjust and discriminatory in states such as Alaska and Hawaii."[32]

If such an analysis were undertaken, the Commission would find that many CMRS providers are offering plans that provide free long distance. Because these plans do not assess a separate toll charge for long distance calls, they are not subject to rate integration requirements.[33] Yet, even though carriers are not *required* to offer these plans everywhere, they are being offered in non-

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30 Moreover, the Commission has indicated that the CMRS industry is not subject to the slamming problems that are becoming prevalent in the context of the wireline interstate, interexchange industry. *See Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers*, CC Docket No. 94-129, *Second Report and Order and Further Notice of Proposed Rulemaking*, FCC 98-334, __ F.C.C.R. ____, 14 Comm. Rep. 799, ¶85 (1998).

31 *See* Powell Dissent, 1999 FCC LEXIS 400, *7 (stating that the Commission has not evaluated whether competitive conditions could produce the same or better results than rate integration).

32 *Id.*

33 Even Alaska and Hawaii concede that such plans should not be subject to rate integration. *See* Opposition of the State of Alaska to Petitions for Reconsideration at 15 (Oct. 31, 1997) ("Interstate CMRS calls for which there is not a toll charge may not properly be subject to rate integration requirements because they are not considered interexchange calls");Opposition of the State of Hawaii at 19 (Oct. 31, 1997) ("The State favors wide-area calling plans that offer distance-insensitive charges because they promote the public policy. . . .").

contiguous areas.[34] Thus, marketplace forces are sufficient to ensure that nondiscriminatory rates are available to consumers in offshore areas.

In the absence of evidence that the CMRS industry's current and past interexchange plans are unjust, unreasonable, or discriminatory, the Commission should not interfere with the marketplace. Without such evidence, the first requirement under Section 10 of the Communications Act is clearly met, because the Commission cannot find that applying rate integration to CMRS is "necessary to ensure that the charges [of CMRS carriers] . . . are just and reasonable, and are not unjustly or unreasonably discriminatory."[35] The Commission retains the ability to stop forbearing if market forces prove insufficient to protect consumers.

B. Enforcement of Section 254(g) is Not Necessary for the Protection of Consumers

Again, CMRS is a fiercely competitive industry. In the current marketplace, no CMRS provider has market power.[36] As a result, it is virtually impossible for a CMRS provider to survive if it is not attentive to the needs of consumers. There is a high churn rate in this industry, which indicates that subscribers are ready and willing to switch carriers when they have a good reason. Any CMRS provider that failed to treat its customers fairly would rapidly drive its dissatisfied customers to a competing CMRS system. Moreover, there is simply no evidence at all that

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34 Both GTE and AT&T offer plans in Hawaii that provide for free CMRS long distance.

35 47 U.S.C. § 160(a)(1).

36 In fact, the Wireless Telecommunications Bureau recently found no competitive objection to allowing AT&T to hold a 25 MHz cellular license and a 30 MHz PCS license covering an entire MTA, given that AT&T would be one of four actual CMRS competitors in the market, with as many as four additional potential facilities-based competitors. *Vanguard Cellular Systems, Inc. and Winston, Inc.*, WTB Docket No. 99-481, *Memorandum Opinion and Order*, DA 99-481 at ¶ 20, 1999 FCC LEXIS 1016 (WTB March 11, 1999).

enforcement of rate integration with respect to CMRS interexchange service is "necessary for the protection of consumers."[37]

C. Forbearance From Applying Section 254(g) to CMRS is Consistent With The Public Interest

Under Section 10, the Commission must determine whether forbearance will serve the public interest. In making this analysis, the Commission must consider whether forbearance will promote competition, including the extent to which forbearance will enhance competition among CMRS providers. Moreover, a determination that forbearance will promote competitive market conditions may be the sole basis for finding that forbearance serves the public interest.[38] That is the case here.

1. Interstate, Interexchange CMRS Generally

Rate integration was adopted to eliminate the practice of providing long distance service between the contiguous forty-eight states and Alaska and Hawaii at international rates.[39] As a result, interstate, interexchange service providers were required to apply the same rate structures and uniform mileage rate patterns for service regardless of whether the call originated in Alaska, Hawaii, or the mainland.[40] This policy was an outgrowth of satellite communications that permitted distance to be eliminated as a cost element. Specifically, traditional long distance providers competed on a nationwide basis and had access to virtually every home in the United States via the wireline telephone network. Once satellite capacity was obtained, a call could be completed anywhere within the United States for roughly the same cost. There was no reason for charging different rates in different markets.

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37 47 U.S.C. § 160(a)(2).

38 47 U.S.C. § 160(b).

39 *See 1976 Integration of Rates and Services Order*, 61 FCC 2d at 380.

40 *Id.* at 380, 383-84 (1976).

There is a rational basis for subjecting interstate, interexchange CMRS to a different regulatory scheme. The Commission has already recognized that "interstate, interexchange CMRS offerings are not the same service as other interstate interexchange services."[41] Unlike traditional interstate interexchange services, "CMRS is primarily a telephone exchange and exchange access service."[42] Consumers generally do not purchase CMRS for the purpose of making long distance calls — they purchase the service to be able to communicate on the move. Additionally, there is only limited national-level competition among CMRS providers; most competition is at the local market level. This is because every CMRS network is designed to respond to local conditions in the market where it is located. Costs vary from market to market, just as the identity of the competitors and the demands of the consumers vary. Thus, the cost to the carrier of providing an end-to-end CMRS call will vary from market to market depending upon the investments made by the carriers to expand coverage areas and improve signal strength.

As a result, unlike traditional long distance, the cost of CMRS does vary depending upon the locale. Competitive conditions in each local market vary greatly and carriers traditionally have developed innovative marketing strategies to distinguish themselves from competitors. Rate integration would undermine the ability of CMRS carriers to distinguish themselves based on interstate, interexchange CMRS rates at the local level.

Although some CMRS providers have aggregated markets together to form new nationwide networks,[43] the majority of the industry operates regional systems clustered around communities of

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41 *Reconsideration Order*, 12 F.C.C.R. at 11821.

42 *Id.*

43 Only three CMRS providers are in the process of developing nationwide CMRS networks. *See Third Annual Report*, 12 Comm. Rep. at 638.

interest.[44] BellSouth operates a number of regional clusters and, absent rate integration obligations, BellSouth has tailored rate plans based upon the communities of interest associated with many of its regional clusters. For example, BellSouth has developed wide-area plans to address identified communities of interest between (i) North and South Carolina, (ii) Alabama and Atlanta, (iii) Alabama and Florida, and (iv) Tennessee and Mississippi. Under these plans, the per-minute price for calls between identified communities of interest is less than the rate set forth in basic plans offered company-wide. If rate integration does not exempt wide-area plans, BellSouth would be forced to discontinue each of the aforementioned plans.

CMRS providers should not be discouraged from making such rate plans available on a market-by-market basis. Traditional interstate, interexchange service providers compete nationally based on price, and to a lesser degree quality, whereas CMRS providers compete locally on a number of additional levels such as the size of the home coverage area, the roaming footprint, and rate plans.[45] Competitive conditions in each local market will vary considerably. The reason for this is due in large part to the nature of CMRS — wireless communications are dependent upon construction of facilities in each market to create coverage areas. A CMRS provider may have superior coverage in one market, but poorer coverage in another market. Thus, if a carrier has superior coverage in a market, it may charge higher rates both to recoup the investments necessary to create the superior coverage area and because subscribers may pay a premium for superior coverage. Competing carriers that do not offer a superior coverage area may attempt to acquire market share by promoting lower prices or other features.

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44 *Id.*

45 *See Third Annual Report* at 635-41.

The rate plans offered by a CMRS provider often differ in each market because the competitive conditions vary in each market. For example, Carrier A may opt to offer Georgia consumers CMRS long distance at low rates, or even for free, in order to obtain market share from Carrier B, which has superior home coverage and roaming packages. In a different market, however, Carrier A may face a different set of competitors and may offer superior home coverage and roaming packages. Thus, Carrier A would not want to offer lower long distance rates in this market. Under rate integration, Carrier A must offer the same long distance rates in all markets, thus prohibiting Carrier A from setting CMRS long distance rates based on the state of competition in each local market.

These and similar rate plans have no impact on interstate, interexchange service from non-contiguous points because the distance between the communities of interest is much shorter than the distance between the mainland and non-contiguous states and territories. Yet rate integration would eliminate these plans because the rate charged between communities of interest would have to be charged for all calls of equal distance, regardless of whether there is a community of interest.

Moreover, the availability of an integrated rate from wireline interstate, interexchange carriers creates a safety umbrella ensuring that integrated rates are available in non-contiguous points. The vast majority of wireless customers have access to wireline telephones and the benefit of integrated rates associated with wireline long distance providers. Wireless customers also can access the integrated rates of traditional interstate, interexchange carriers via calling cards and "800" numbers. Thus, wireless customers always will have access to an integrated rate even if rate integration is not applied to the CMRS industry.

The inevitable result of the Commission's rejection of the market-based pricing arrangements that have governed CMRS in the past will be diminished consumer choice, lessened competition, and increased prices. Extension of rate integration to CMRS would inhibit CMRS providers from competing based on "service packages" that involve interexchange services. Accordingly, the Commission should forbear from applying rate integration to interstate, interexchange CMRS. Such forbearance would permit rates to differ based on local market conditions, which are largely irrelevant for traditional wireline interstate, interexchange carriers.

2. Wide-Area Rate Plans

At a minimum, the Commission should forbear from applying rate integration to interstate, interexchange wide-area CMRS calling plans, such as those that address unique communities of interest or regional calling patterns. The Commission itself expressed concern that "application of rate integration requirements to wide area rate plans could be disruptive to consumers" and that subjecting such plans to rate integration may not be warranted.[46] Even Alaska and Hawaii, the only parties supporting application of rate integration to the CMRS industry, recognize the public interest benefits of wide-area CMRS calling plans that permit subscribers to make calls throughout an area for the same price as a local call, even though such calls might otherwise be interstate, interexchange calls, and they agree that such plans should not be subject to rate integration.[47]

For example, subscribers in BellSouth's Birmingham, Alabama, cellular market are offered a rate plan that treats calls from Birmingham to Atlanta, Georgia, as toll-free. This plan is offered

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[46] *Stay Order*, 12 F.C.C.R. at 15747; *FNPRM* at ¶ 9.

[47] Alaska Opposition at 15 ("Interstate CMRS calls for which there is not a toll charge may not properly be subject to rate integration requirements because they are not considered interexchange calls"); Hawaii Opposition at 19 ("The State favors wide-area calling plans that offer distance-insensitive charges because they promote the public policy. . . .").

to subscribers in Birmingham because of the community of interest between Birmingham and Atlanta; a large number of Birmingham residents regularly travel to Atlanta. BellSouth offers a similar rate plan in one of its PCS MTAs that permits subscribers to make calls anywhere within North Carolina, South Carolina, and eastern Tennessee for a flat rate per month. In its Mobile, Alabama, cellular MSA, BellSouth offers a rate plan that permits subscribers to place calls to and from three Florida counties for the price of a local call. In Memphis, Tennessee, BellSouth's cellular customers can call anywhere in Mississippi or Tennessee for a flat monthly rate. In each case, the customer pays only the standard airtime rate for each minute of calling, with no toll charge, as with a completely local call. At least 115,000 BellSouth CMRS customers subscribe to these and similar wide-area calling plans.

These calling plans offer benefits similar to the extended area service ("EAS") arrangements that have expanded wireline telephone customers' local calling areas and are fundamentally local exchange, not interexchange service.[48] The principal differences between CMRS calling plans and the similar wireline arrangements are that (a) the CMRS plans have been developed and implemented through market mechanisms instead of regulation and (b) the CMRS plans cover

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[48] *See Limited Modification of LATA Boundaries to Provide Expanded Local Calling Service,* CC Docket 96-159, *Memorandum Opinion and Order,* FCC 97-244 at ¶ 1 n.4, 8 Comm. Rep. 1150 (July 15, 1997) ("A local calling area consists of one or more telephone exchanges and is an area within which subscribers can place calls without incurring any additional charge over their regular monthly service charge. . . . Local calling areas are established by state regulatory commissions. . . . ELCS (also known as extended area service or EAS) allows local telephone service rates to apply to nearby telephone exchanges, thus providing an expanded local calling area."); *Blocking Interstate Traffic in Iowa,* 2 F.C.C.R. 2692, 2692 n.2 (1987) ("In an EAS arrangement, a customer in one exchange can call a local number in another exchange that is part of the extended area without paying a toll charge. An exchange subscriber in one exchange can therefore access an interexchange carrier's network toll free by calling its seven-digit access number even if that interexchange switch is located in a different exchange. Exchange switches typically recognize such calls as EAS calls, not as interexchange calls for which access charges are applicable.").

different areas, usually much larger than wireline extended calling areas, due to the mobile nature of CMRS usage.

There is no evidence in the record supporting the need to subject such plans to rate integration. In fact, all parties agree that wide-area CMRS calling plans that do not assess per-minute or usage-sensitive toll charges should not be subject to rate integration. Many CMRS carriers provide wide-area calling as part of their standard basic rate plan, while others offer one or more optional wide-area plans in addition to the standard plan. In each case, customers opting for wide-area calling plans usually pay a flat monthly fee for the plan. This fee is not usage sensitive and does not apply solely to interstate, interexchange calls.[49] The Commission should clarify that these monthly fees do not alter the nature of these wide-area plans. These plans are similar to EAS plans which are not regulated as interexchange services. Accordingly, should the Commission reject complete forbearance for the CMRS industry, it should expressly exempt these wide-area calling plans from this requirement.

In addition to the aforementioned plans, some carriers offer wide-area calling plans that permit calls within a defined area at a reduced rate. These plans also should be exempt from rate integration. For example, for a small monthly fee, a subscriber may be able to make calls within a cluster of commonly-owned markets for $.35 per minute. If the subscriber does not subscribe to the optional plan, such calls may cost $.45 per minute. These calling plans also are designed to accommodate communities of interest and customer calling patterns. Yet rate integration would

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[49] In some cases, wide-area coverage is offered to customers agreeing to purchase a "bucket" of minutes of airtime for a fixed charge, instead of paying a flat monthly fee plus airtime. In either case, the plan permits calling throughout an extended area without any charge beyond the local airtime charge.

require carriers to impose a one-size fits all plan in all markets, which would preclude beneficial plans designed to satisfy local consumer demands.

If market-specific pricing plans are barred, consumers will be denied the benefits of calling plans that meet their needs. A one-size-fits-all policy means that *all* consumers will be disadvantaged.[50] BellSouth has approximately 16 wide-area calling plans designed in response to consumer demand and local market conditions. If such plans were subject to rate integration, BellSouth likely would have to discontinue 8 plans.

3. Interstate, Interexchange Roaming

In its various roaming decisions, the Commission has steadfastly refused to require that a CMRS carrier charge the same rates for roaming in every market.[51] Typically, roaming charges are merely a "pass-through" of contractually based prices, negotiated on a carrier-by-carrier basis. Application of rate integration to roaming would require a complete overhaul of the roaming paradigm. Cellular carriers compete vigorously in their marketing efforts on the basis of their roaming footprint and roaming rates.[52] If CMRS carriers were required to integrate their roaming rates in all markets, their ability to differentiate themselves from their competition would be severely limited. As a result, rate integration "may actually serve to lessen overall competition in the CMRS market."[53] For that reason alone, roaming rates and plans should be excluded from rate integration.

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50 As a practical matter, it is impossible to have the same wide area calling plans for multiple markets. Plans must be tailored to the unique communities of interest in each market. Distances between relevant communities of interest will vary with each market.

51 *See Interconnection and Resale Obligations Pertaining to CMRS Services*, CC Docket No. 94-54, *Second Report and Order*, 11 F.C.C.R. 9462 (1996).

52 *Id.* at 9498 (separate statement of Commissioner Chong).

53 *Id.*

Moreover, because the "roaming charge assessed for a purely local call is generally the same as that assessed in connection with a toll call,"[54] extension of rate integration to the roaming charges associated with an interstate, interexchange call would either (i) require CMRS providers to create a new category of roaming charges or (ii) require the integration of all roaming charges. The first option is unduly burdensome and the second would extend rate integration beyond its intended scope to local calls.

II. THE COMMISSION SHOULD CLARIFY THAT TO THE EXTENT CMRS IS SUBJECT TO RATE INTEGRATION, A GIVEN CMRS PROVIDER CAN ONLY BE "AFFILIATED" WITH A SINGLE PARENT

If it does not forbear altogether from enforcing rate integration to the CMRS industry, the Commission should at least modify its cross-affiliate application of the policy. In particular, it should not use "control," as defined by 47 C.F.R. § 32.9000, to determine whether two companies are sufficiently connected to have to integrate their rates with each other. The Commission has acknowledged that this requirement may be overbroad and has requested comment on a less stringent test for determining affiliation for rate integration purposes.[55] Even Hawaii and Alaska concede that the Commission's rule is unworkable as currently written.

BellSouth proposes that a carrier is affiliated with another entity only if the carrier exercises management control over the entity even if it holds less than a 50% equity interest in the entity. This approach will eliminate the problematic daisy-chain effect that plagues the current rule, and ensure that carriers are not able to avoid rate integration requirements by creating innovative ownership structures.

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54 *FNPRM* at ¶29.

55 *FNPRM* at ¶23.

III. CMRS PROVIDERS SHOULD NOT BE REQUIRED TO INTEGRATE RATES FOR DIFFERENT TYPE OF CMRS

BellSouth submits that the Commission should not require rate integration to apply across cellular-PCS lines within a company or group of affiliates, in the event CMRS remains subject to rate integration at all. The Commission previously indicated that companies would not be required to engage in cross-service integration between wireline and CMRS.[56] Consistent with this approach, the Commission should permit companies to integrate cellular and PCS rates separately.

PCS providers typically set prices between 10 and 20 percent below their cellular competitors in order to acquire market share.[57] In some cases, PCS providers may virtually eliminate profit margins in order to acquire market share and then gradually increase rates once they have achieved market penetration.[58] Requiring cross-service rate integration will disadvantage consumers because many of these low rates will be eliminated. Specifically, if a carrier owns both PCS and cellular systems, it is unlikely to offer low PCS rates, sacrificing profit for market share growth, because it would be required to adopt these rates in its cellular markets as well. Quite simply, carriers cannot afford to take such an approach.

PCS systems need to adopt new pricing approaches to develop a customer base, given the existence of two incumbent cellular systems. If the Commission requires the PCS carrier to be rate-integrated with its sister cellular carriers in other markets, it will significantly retard the ability of a PCS carrier to enter into competition with incumbent cellular carriers. Under rate integration, a PCS licensee's entry-related pricing strategies would be dependent in large part upon the pricing

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56 *Reconsideration Order*, 12 F.C.C.R. at 11821.

57 *See Third Annual Report*, 12 Comm. Rep. at 637.

58 *Id.* (indicating that at least one PCS carrier began raising rates after acquiring market penetration).

strategies of its sister cellular carriers in unrelated markets. This would have the effect of establishing a single price schedule for both new entrants and incumbents nationwide. Any regulation of the prices charged by new entrants — and particularly tying new entrants to incumbents' prices elsewhere — will dampen the prospects for competitive entry into PCS by cellular-affiliated companies.

IV. THE COMMISSION SHOULD GRANDFATHER EXISTING CMRS RATE PLANS

The CMRS industry poses another unique problem with regard to rate integration — how to treat existing rate plans. This problem is multifaceted. First, how should carriers treat existing customers who subscribe to wide-area plans? BellSouth submits that current pricing for interstate calls contained in existing customer contracts should be exempt from rate integration. This approach will eliminate the animosity and potential litigation associated with altering the rates of existing subscribers. Carriers should not be forced to revoke or modify existing rate plans as a result of the Commission's decision, thereby upsetting consumers' expectations. Moreover, given the relatively high churn rate in the CMRS industry, these grandfathered situations should decrease significantly disappear within a few years as a result of continued competitive pressure.

Second, the Commission should grandfather rate plans associated with markets acquired by another CMRS licensee. Because the acquiring carrier did not set the rates associated with the acquired customer base, the carrier should not be required to integrate the rates associated with this customer base into its own rate structure.[59] Instead, as in the first example, the Commission should rely on churn to transform the rate structure of an acquired market into that of the acquiring carrier.

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[59] The acquiring carrier would, of course, retain the ability to integrate the rates of acquired systems with its existing systems in response to consumer demand, subject to any contractual limitations.

CONCLUSION

For the foregoing reasons, the Commission should forbear from applying rate integration requirements to the highly competitive CMRS industry. If nevertheless it applies rate integration to CMRS, the Commission should exempt from that policy (i) the proliferation of wide-area rate plans and roaming arrangements that respond to consumer demands, and (ii) cross-service (*i.e.*, cellular and PCS) operations. The Commission should eliminate the affiliation threshold currently set by Section 32.9000 to prevent the anticompetitive result that occurs when multiple competing parents must be rate integrated with a single affiliate. Finally, the Commission should grandfather all existing rate arrangements, to ensure that consumers are not denied benefits in the name of protecting them.

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